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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte JANANI JANAKIRAMAN
and RABINDRANATH DUTTA

_____

Appeal 2008-0998
Application 09/842,835
Technology Center 2100

_____

Decided: February 4, 2009

_____

Before JAMES D. THOMAS, JEAN R. HOMERE, and STEPHEN C. SIU,
Administrative Patent Judges.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal from a rejection of claims 1-33 under authority of
35 U.S.C § 134(a). The Board of Patent Appeals and Interferences (BPAI)
has jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The Invention

The disclosed invention relates generally to rendering graphical information in textual form (Spec. 1).

Illustrative Claim

Claim 1 is illustrative:

1.   A method in a data processing system for presenting graphical data to a user, comprising the steps of:

analyzing a set of graphical data to determine a set of critical factors present in the graphical data to form determined critical factors;

ranking the determined critical factors according to respective priorities set for each of the critical factors; and

generating a textual description of the set of graphical data, ordered according to the priorities of each of the respective critical factors.

References

The Examiner relies upon the following references as evidence in support of the rejections:

Berckmans   US 6,876,981 B1   Apr. 5, 2005
                                                       (filed Oct. 26, 1999)

Wendy Chisholm et al., *Web Content Accessibility Guidelines 1.0*,
W3C, Recommendation ("W3C"), (1999) available at
http://www.w3.org/TR/WAI-WEBCONTENT/.

Rejections

1. The Examiner rejects claims 1-3, 6-10, 13-17, 20-22, 24-26, and 28-33 under 35 U.S.C. § 102(e) for being anticipated by Berckmans.

2. The Examiner rejects claims 1, 4, 5, 8, 11, 12, 15, 18, 19, 22 and 23 under 35 U.S.C. § 103(a) for being obvious over Berckmans in view of W3C.[1]

3. The Examiner rejects claim 27 under 35 U.S.C. § 103(a) for being obvious over Berckmans and Common Knowledge.

ISSUE #1

Appellants argue that Berckmans fails to teach "that the core information in the cells of screen 300 is graphical or could be graphical" (App. Br. 14).

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[1] The Examiner rejects claims 4, 5, 11, 12, 18, 19, and 23 under 35 U.S.C. § 103(a) for being obvious over Berckmans in view of W3C. However, when it is determined that a dependent claim recites subject matter that would have been obvious to one of ordinary skill in the art, the independent claim from which the dependent claim depends would also have been obvious to one of ordinary skill in the art. *See Ormco Corp. v. Align Technology, Inc.*, 498 F.3d 1307, 1319-20 (Fed. Cir. 2007) (explaining that when dependent claims "were found to have been obvious, the broader claims . . . must also have been obvious"). Therefore, the Examiner is considered to have rejected all claims from which claims 4, 5, 11, 12, 18, 19, or 23 depend.

The Examiner finds that "Berckmans specifically shows financial data rendered in a web browser within a table" and that a table "containing values represents graphical information (data)" (Ans. 8).

Did Appellants show that the Examiner erred in finding Berckmans teaches a set of graphical data?

FINDINGS OF FACT

The following Findings of Facts (FF) are shown by a preponderance of the evidence.

Berckmans

1. Berckmans teaches, for example, "options financial data" (col. 5, l. 21), "investing data" (col. 5, l. 25), and "investment parameters" (col. 7, l. 32).

2. Berckmans discloses that a "dialog box 610 allows the user to assign or link investment parameters to the cell attributes. A user first selects which cell attribute to configure . . . [and] a parameter is associated with the attribute by means of check boxes" (col. 7, ll. 32-37). Option data corresponding to the selecting parameters "are presented in the investment display section 302" (col. 8, ll. 10-11).

3. Berckmans discloses that data is presented "in combination with text" (col. 6, l. 20).

4.   Berckmans teaches "the display mode is highly configurable according to the user's personal preferences" (col. 6, ll. 26-27).

5.   Berckmans teaches "each investment cell **500** . . . contain[s] cell attributes such as cell text . . . each cell attribute is associated to an investment parameter set in the display control section **304**" (col. 6, ll. 32-36).

6.   Berckmans teaches "the display control section **304** lists each cell attribute **600** (i.e., the cell text . . .), along with its associated financial parameter **602**" (col. 7, ll. 21-24).

7.   Berckmans teaches that the display control section 304 has an associated "cell attribute dialog box **610**, as shown in FIG. **6B** . . . [that] allows the user to assign or link investment parameters to the cell attributes. A user first selects which cell attributes to configure using attribute selection tabs **612**. Once the attribute is selected, a parameter is associated with the attribute by means of check boxes **614** next to each investment parameter" (col. 7, ll. 31-38).

W3C

8.   W3C teaches that "[t]ext content can be presented to the user as synthesized speech, braille" (p. 5).

PRINCIPLES OF LAW

Anticipation

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Obviousness

> Section 103 forbids issuance of a patent when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1734 (2007).

"What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under *§ 103.*" *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. at 1742 (2007). In *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," *Id.* at 1739, and discussed circumstances in which a patent might be determined to be obvious. *KSR,* 127 S. Ct. at 1739 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* The operative question in this "functional approach" is thus "whether the improvement is more than the

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predictable use of prior art elements according to their established functions." *Id.* at 1740.

The Federal Circuit recently recognized that "[a]n obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (citing *KSR*, 127 S. Ct. 1727, 1739 (2007)). The Federal Circuit relied in part on the fact that Leapfrog had presented no evidence that the inclusion of a reader in the combined device was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Id.* at 1162 (citing *KSR*, 127 S. Ct. at 1740-41).

<center>ANALYSIS (ISSUE #1)</center>

In the absence of an explicit definition in the Specification, we construe the term "graphical data" using a plain and ordinary interpretation of the term to include any sets of data or information that can be graphed. Berckmans teaches, for example, "options financial data" (col. 5, l. 21), "investing data" (col. 5, l. 25), and "investment parameters" (col. 7, l. 32) (FF 1) associated with financial data, any of which are capable of being displayed in a graphical format. Therefore, we find that Berckmans' data

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comports with the ordinary and customary meaning of the term "graphical data."

Accordingly, we conclude that Appellants have not met their burden of showing that the Examiner erred in rejecting claims 1-33 with respect to issue #1.

ISSUE #2

Appellants argue that Berckmans fails to "teach . . . 'analyzing a set of graphical data to determine a set of critical factors present in the graphical data'" (App. Br. 14).

The Examiner finds that Berckmans teaches "analysis of the graphical data . . . and provides a result to the user" (Ans. 9).

Did Appellants show that the Examiner erred in finding Berckmans teaches analyzing a set of graphical data?

ANALYSIS (ISSUE #2)

Berckmans discloses that a "dialog box 610 allows the user to assign or link investment parameters to the cell attributes. A user first selects which cell attribute to configure . . . [and] a parameter is associated with the attribute by means of check boxes" (col. 7, ll. 32-37). Option data corresponding to the selecting parameters "are presented in the investment display section 302" (col. 8, ll. 10-11). Hence, Berckmans discloses a user analyzing (and selecting) investment parameters (via dialog box 610) that

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are determined from the user's analysis and selection of the investment parameters. The investment parameters that are analyzed and selected by the user in Berckmans constitute the "critical factors" because both are determined by analysis of graphical data (i.e., investment parameter data capable of being displayed graphically).

Accordingly, we conclude that Appellants have not met their burden of showing that the Examiner erred in rejecting claims 1-33 with respect to issue #2.

ISSUE #3

Appellants argue that "*Berckmans* . . . does not teach ranking of the critical factors" (App. Br. 15).

The Examiner finds that "[t]he ranking of the factors is specified by the user" (Ans. 10).

Did Appellants show that the Examiner erred in finding Berckmans teaches ranking the determined critical factors according to respective priorities set for each of the critical factors?

ANALYSIS (ISSUE #3)

We construe the term "ranking" using a plain and ordinary interpretation of the term to include any ordering of items in a particular order. While we agree with the Examiner that Berckmans discloses that a user may select parameters or factors to be displayed, we do not find, and

the Examiner has not demonstrated, that Berckmans also discloses that the user ranks the factors/parameters according to respective priorities set for each of the factors/parameters as recited in claims 1, 8, and 15. Nor has the Examiner shown that Berckmans discloses priorities set for each of the parameters selected by the user.

Accordingly, we conclude that Appellants have met their burden of showing that the Examiner erred in rejecting claims 1-3, 6-10, 13-17, 20-22, 24-26, and 28-33 as being anticipated by Berckmans with respect to issue #3. Therefore, we reverse the Examiner's rejection of claims 1-3, 6-10, 13-17, 20-22, 24-26, and 28-33 under 35 U.S.C. § 102(e).

ISSUE #4

Appellants argue that "claim 1 recites generating a textual description of the set of graphical data, which is the opposite of *Berckmans'* teachings" (App. Br. 17).

The Examiner finds that "Berckmans expressly teaches the process of generating text" (Ans. 10).

Did Appellants show that the Examiner erred in finding Berckmans teaches generating a textual description of the set of graphical data?

ANALYSIS (ISSUE #4)

As described above, Berckmans teaches displaying graphical data in cells. Berckmans also discloses that data is presented "in combination with

text" (FF 3) that describes the graphical data. In view of Berckmans'
explicit teaching of displaying graphical data with text, we agree with the
Examiner that Berckmans teaches a textual description of graphical data.

Accordingly, we conclude that Appellants have not met their burden
of showing that the Examiner erred in rejecting claims 1-33 with respect to
issue #4.

<div align="center">ISSUE #5</div>

Appellants argue that "*Berckmans* does not teach or suggest any of the
analyzing, ranking, or generating steps" (App. Br. 19) and "*W3C* does not
teach or suggest the features that have been shown deficient in *Berckmans*"
(App. Br. 20) with respect to claim 4.

The Examiner finds that "[t]he ranking of the factors is specified by
the user" (Ans. 10).

Did the Appellants show the Examiner erred in finding that
Berckmans and/or W3C teaches or suggests the analyzing, ranking, or
generating steps?

<div align="center">ANALYSIS (ISSUE #5)</div>

We agree with the Examiner that Berckmans discloses the analyzing
and generating steps for reasons set forth above. Also, a user in Berckmans
selects parameters to be displayed that are important or desired by the user
since one of ordinary skill in the art would not have logically selected

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parameters that were not desired. When the user in Berckmans selects desired parameters (and does not select undesired parameters), the user effectively separates the parameters into different groups based on whether the user considers the parameters important, necessary, or desired. By selecting desired parameters in an order of desirability of the parameters according to Berckmans, it would have been obvious to one of ordinary skill to have further formulated criteria to determine priorities (or relative importance) of parameters in order to select those parameters in the proper order of desirability. This is because devising criteria to determine the relative importance of parameters to be selected (or to not be selected) would have been an obvious and common sense approach to determining which parameters to select in the Berckmans disclosure.

In Berckmans, a user selects desired parameters and does not select undesired parameters which effectively separates parameters based on the desirability of the parameters. Clearly, in order for one of ordinary skill in the art to have selected parameters that are important or desirable (as per Berckmans), one of ordinary skill in the art would also have had to determine which parameters are important prior to selection. As described, it would have been obvious to apply the selection criteria in order to select the desired parameters. As such, we find that it would have been obvious to one of ordinary skill in the art to rank the selected parameters in a particular order according to respective priorities set for each of the parameters or factors given Berckmans' disclosure of selecting desired parameters and not

selecting undesired parameters. As Berckmans demonstrates, ordering or ranking selected parameters in a particular order of importance would have been a common sense practice to a user selecting desired parameters because selecting and ordering the parameters would have been a familiar practice that would have resulted in no more than a predictable and expected result of obtaining desired parameters for display. "When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. at 1742 (2007).

Because Berckmans discloses or suggests each of the analyzing, generating, and ranking steps as described above, we are unpersuaded by Appellants' contention that the combination of Berckmans and W3C fail to suggest the invention because W3C allegedly fails to provide these teachings. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

As set forth above, Appellants have treated claims 1, 3, 6-8, 10, 13-15, 17, 20-22, 24-26, and 28-33 as one group which stand or fall together and claims 4, 5, 11, 12, 18, 19, and 23 as another group which stand or fall

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together. Also, Appellants have not provided additional arguments for dependent claims 2, 9, and 16. As described above, the Examiner is considered to have rejected all claims from which claims 4, 5, 11, 12, 18, 19, or 23 depend, which includes claim 1. Thus, claims 1-26 and 28-33 are considered as a single group, and we select independent claim 1 as the representative claim for this group. *See* 37 C.F.R. § 41.37(c)(1)(vii)). Because Appellants have not demonstrated Examiner error in rejecting dependent claim 4 as being obvious, independent claim 1 (from which claim 4 depends), and claims 2-26 and 28-33, which fall therewith, must also have been obvious with respect to issue #5. *Ormco Corp.*, 498 F.3d at 1319-20.

Accordingly, we conclude that Appellants have not met their burden of showing that the Examiner erred in rejecting claims 1-26 and 28-33 with respect to issue #5.

ISSUE #6

Appellants argue that "none of the fourteen guidelines contained in *W3C* pertain to generating textual rendition in aural format." (App. Br. 25).

The Examiner finds that "W3C [teaches] a structure to render graphical elements in an aural format" (Ans. 12).

Did Appellants show the Examiner erred in finding W3C teaches generating the textual rendition in an aural format?

ANALYSIS (ISSUE #6)

Because of W3C's explicit teaching of "[t]ext content can be presented to the user as synthesized speech" (FF 8) and because synthesized speech is data in an aural format, we agree with the Examiner that W3C teaches generating a textual rendition in an aural format.

Accordingly, we conclude that Appellants have not met their burden of showing that the Examiner erred in rejecting claim 4, or of claims 1-3, 6-11, 13-18, 20-26, and 28-33, which fall therewith, with respect to issue #6.

ISSUE #7

Appellants argue that "[o]ne of ordinary skill would not combine the cited references to reach claim 4 because the references are directed towards solving different problems" (App. Br. 27).

Did Appellants show that the Examiner erred in finding that it would have been obvious to one of ordinary skill in the art to have combined Berckmans with W3C?

ANALYSIS (ISSUE #7)

Berckmans and W3C disclose known methods of outputting information to a user from a computer program product. W3C also discloses displaying the data such that visually impaired individuals may access the data (e.g., as synthesized speech or in braille format). Hence, both Berckmans and W3C disclose known systems and methods for displaying

data while W3C also discloses the known element of displaying the data in a format accessible to visually impaired individuals.

Each of Berckmans and W3C disclose known methods of data display that, when combined, would have resulted in a predictable solution to a person of ordinary skill in the art of displaying data to a visually impaired individual. We do not find, and Appellants fail to demonstrate, that the combination of the known elements of the Berckmans system for data display and the W3C system for data display, both of which were within the technical grasp of one of ordinary skill in the art, would have yielded anything more than what one of ordinary skill in the art would have expected from such a combination (i.e., display of data in an accessible way). Therefore, we agree with the Examiner that it would have been obvious to one of ordinary skill in the art to combine the teachings of Berckmans and W3C. "[W]hen a patent 'simply arranges old elements with each performing the same function it had been known to perform' and yields no more than one would expect from such an arrangement, the combination is obvious." *KSR* at 1740 (citing *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976)).

Accordingly, we conclude that Appellants have not met their burden of showing that the Examiner erred in rejecting claim 4, or of claims 1-3, 5-26, and 28-33, which fall therewith, with respect to issue #7.

<div align="center">ISSUE #8</div>

Appellants argue that "*W3C* contains no teachings or suggestions on generating any of the transformations [into braille as] described in *W3C*" (App. Br. 26-27).

Did Appellants show the Examiner erred in finding W3C teaches generating the textual rendition in a tactile format?

<div align="center">ANALYSIS (ISSUE #8)</div>

Because of W3C's explicit teaching of "[t]ext content can be presented to the user as . . . braille" (FF 8) and because braille is a tactile format of data, we agree with the Examiner that W3C teaches generating the textual rendition in a tactile format.

Accordingly, we conclude that Appellants have not met their burden of showing that the Examiner erred in rejecting claims 5, 12, and 19 with respect to issue #8.

<div align="center">ISSUE #9</div>

Appellants argue that "*Berckmans* does not teach or suggest any of the analyzing, ranking, or generating steps with respect to . . . claim 8" and that "[s]imilar features are also present in claim 27 . . . and are not taught or suggested by *Berckmans* by the same reasoning" (App. Br. 30). Appellants also assert that "common knowledge is insufficient to fulfill [these] deficiencies described in *Berckmans* as to claim 8" (*id.*).

Did Appellants show the Examiner erred in finding Berckmans and/or common knowledge teach or suggest the analyzing, ranking, and generating steps recited in claim 27?

ANALYSIS (ISSUE #9)

As above, we agree with the Examiner that Berckmans teaches or suggests the analyzing, ranking, and generating steps. Therefore, we find unpersuasive Appellants' contention that Common Knowledge allegedly fails to provide these teachings.

Accordingly, we conclude that Appellants have not met their burden of showing that the Examiner erred in rejecting claim 27 with respect to issue #9.

CONCLUSIONS OF LAW

On the record before us, we conclude that Appellants have failed to demonstrate that the Examiner erred in finding that:

1. Berckmans teaches a set of graphical data (issue #1),

2. Berckmans teaches analyzing a set of graphical data (issue #2),

3. Berckmans teaches generating a textual description of the set of graphical data (issue #4),

4. Berckmans and/or W3C teach or suggest the analyzing, ranking, or generating steps (issue #5),

  5. W3C teaches generating the textual rendition in an aural format (issue #6),

  6. it would have been obvious to one of ordinary skill in the art to have combined Berckmans with W3C (issue #7),

  7. W3C teaches generating the textual rendition in a tactile format (issue #8), and

  8. Berckmans and/or common knowledge teach or suggest the analyzing, ranking, and generating steps recited in claim 27 (issue #9).

  However, Appellants have demonstrated that the Examiner erred in finding that Berckmans teaches (and anticipates) ranking the determined critical factors according to respective priorities set for each of the critical factors (issue #3).

DECISION

  We reverse the Examiner's decision rejecting claims 1-3, 6-10, 13-17, 20-22, 24-26, and 28-33 under 35 U.S.C. § 102(e).

  We affirm the Examiner's stated decision rejecting claims 4, 5, 11, 12, 18, 19, 23, and 27 and the Examiner's implied decision rejecting claims 1-3, 6-10, 13-17, 20-22, 24-26, and 28-33 under 35 U.S.C. § 103.

  Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner's decision is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

No time period for taking any subsequent action in connect ion with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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